

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3631 of 1986
WITH S.C.A.3632 OF 1986

Date of decision: 22-10-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KUMAR SHRI RAGHURAJSHINHI J

Versus

STATE OF GUJARAT

Appearance:

MR YS MANKAD for Petitioner

Mr. N.D. Gohil for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/10/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.
Challenge is made by the petitioners in these
special civil applications to the orders dated 23rd April

1985 at annexure G1 in both the petitions, made by the respondent Additional District Magistrate, Kachchh at Bhuj, under which permission for transfer of the fire arms from their father to the petitioners has been rejected on the ground that they are not having licence for the arms of the nature which are sought to be transferred to them by their father. Challenge is also made to the order dated 1-11-1985 of the respondents under which the applications filed by the petitioners for grant of licence to possess fire arms of the nature sought to be transferred to them by their father have been rejected.

2. It is not in dispute that as per the provisions of the Arms (Amendment) Ordinance, 1983 father of the petitioners was rendered ineligible to keep more than three arms under the licence, if on the day on which the aforesaid ordinance came into force he was having more than three arms under the licence. There is no dispute between the parties that on the aforesaid date father of the petitioners was having five arms covered under the licence. Father of the petitioners was directed to surrender two arms of his choice to the nearby police station or arms dealer within four days of the letter dated 8-8-1983. It is admitted by the petitioners that in pursuance of the said letter, father of the petitioners had surrendered two arms, details of which are as under:

- "1. 410 Bore Shotgun - Stiff gun No.15037 -
Holiwali.
2. 355 Bore No.6949 Rifle - Manlikar."

Father of the petitioners made request to the Licensing Authority that the aforesaid two arms, surrendered in view of the amended provisions of the Ordinance, be permitted to be gifted by him to each of his two sons who are having arms licence individually. The petitioners also made request to respondent No.2 for making necessary entry of these arms in their licence individually. Under order dated 23-4-1985 the application of the petitioners was rejected on the ground that they are not having licence for 410 Bore Shotgun and 355 Bore Rifle. That was the only ground given for declining the claim of the petitioners for transfer of the arms of their father to them by respondent No.2. Then the petitioners applied for grant of licence for the arms of the aforesaid description, but under order dated 1-11-1985 the application was rejected without giving any reason whatsoever. One of the contentions raised by the learned counsel for the petitioner is that the arms of the father of the petitioners were not permitted to be transferred

in their favour on the ground that the arms licence which they are having were not for the arms of the description aforesaid. But when they applied for the licence for the arms of the description aforesaid their application should not have been dismissed or if it could have been then a speaking order should have been passed.

3. On the other hand learned counsel for the respondents fairly conceded that respondent No.2 has not given any reasons whatsoever for rejection of the application of the petitioners filed by them for grant of licence for possessing the specific category of arms.

4. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. It is not the case of the respondents that the arms which were rendered surplus by reason of amendment of the Act, could not have been gifted by father of the petitioners to his sons. It is also not the case of respondent No.2 that transfer of the arms of the father to the sons was not permissible. Transfer of the arms by father of the petitioners in their favour has been declined by respondent on the ground that the arms licence which they were possessing were not of the category to which these arms could have been entered into. To overcome this difficulty the petitioners have taken the course of applying for grant of licence to them for possessing specific arms, i.e. the arms to be gifted to them by their father. Respondent No.2 has rejected this application without giving any reasons. Once application is submitted by a person for grant of licence for possessing arms specified therein, respondent No.2 should have given out reasons for not accepting the prayer. Both these special civil applications deserve to be dismissed on this short ground. Order accordingly.

5. In the result this petition succeeds and the same is allowed. The orders dated 23-4-1985 at annexure G1 in both the petitions are quashed and set aside. The matter is remanded back to respondent No.2 for deciding the applications afresh after hearing the petitioners. In case the prayer of the petitioners is not acceptable, then the respondents may record reasons for the same, and copy of the order may be sent to the petitioners by registered post. Rule made absolute in the aforesaid terms in both the petitions. No order as to costs.

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